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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/468,147	12/21/99	SCHLAUDER G	6232.US.P1

023492
ABBOTT LABORATORIES
DEPT. 377 - AP6D-2
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HM12/0305

EXAMINER	
BRUMBACK, B	
ART UNIT	**PAPER NUMBER**
1642	8

DATE MAILED: 03/05/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
09/468,147	Schlauder et al.
Examiner	**Group Art Unit**
Brenda Brumback	1642

☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *1* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1-43* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims *1-43* are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1, 4-11, 14-20, and 24-26, drawn to methods of detecting the presence of a U.S. type hepatitis E virus (HEV) with a polypeptide binding partner, classified in class 435, subclass 5.

II. Claims 1-3, 12, 13, 24, and 26, drawn to methods of detecting the presence of a U.S. type HEV with an antibody binding partner, classified in class 435, subclass 5.

III. Claims 1, 21-23, and 27, drawn to methods of detecting U.S. type HEV with a nucleic acid marker, classified in class 435, subclass 6.

IV. Claims 28 and 39, drawn to isolated polypeptides and methods of immunization using the polypeptides, classified in class 530, subclass 324 and in class 424, subclass 189.1.

V. Claims 29-34 and 40, drawn to antibodies which bind HEV polypeptides, classified in class 530, subclass 388.3.

VI. Claims 35-38, drawn to isolated HEV nucleic acids, classified in class 536, subclass 23.72.

VII. Claims 29-31 and 40-42, drawn to methods of immunization using antibodies classified in class 424, subclass 149.1.

VIII. Claims 35, 37, 38, and 43, drawn to methods of immunization with nucleic acid, classified in class 514, subclass 44.

Note: Claims which appear in more than a single group will be examined with the elected group to the extent that they read on that group.

2. The inventions are distinct, each from the other because of the following reasons: Inventions I and IV; II, V, and VII; and III, VI, and VIII are related as products and processes of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the polypeptides of Group IV can be used in the materially different process of affinity purification of antibodies, the antibodies of Group V can be used in the materially different process of affinity purification of proteins, and the nucleic acids of Group XIV can be used in the materially different process of recombinant *in vitro* production of polypeptides.

The products of Groups IV, V, and VI have different structures and different immunological properties.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and/or their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

4. Claims 1, 4-8, 14-20, and 24-26 are generic to a plurality of disclosed patentably distinct species comprising SEQ ID Nos: 91, 92, 93, 173, 174, 175, 176, 166, 167, 168, 223, and 224.

Claims 1-3, 12, 13, 24, and 26 are generic to a plurality of disclosed patentably distinct species comprising SEQ ID Nos: 91, 92, 93, 166, 167, and 168.

Claims 1, 21-23, and 27 are generic to a plurality of disclosed patentably distinct species comprising SEQ IS Nos: 89, 164, 126, 128, 147, 148, 150, 152, 177, and 178.

Claims 29-34 and 40 are generic to a plurality of disclosed patentably distinct species comprising antibodies which bind polypeptides of SEQ ID Nos:173, 174, 176, 223, and 224.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

5. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda Brumback whose telephone number is (703) 306-3220. If the examiner can not be reached, inquiries can be directed to Supervisory Patent Examiner Anthony Caputa whose telephone number is (703) 308-3995. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Examiner Brenda Brumback, Art Unit 1642 and should be marked "OFFICIAL" for entry into prosecution history or "DRAFT" for consideration by the examiner without entry. The Art Unit 1642 FAX telephone number is (703)-305-3014. FAX machines will be available to receive transmissions 24 hours a day. In compliance with 1096 OG 30, the filing date accorded to each OFFICIAL fax transmission will be determined by the FAX machine's stamped date found on the last page of the transmission, unless that date is a Saturday, Sunday or Federal Holiday with the District of Columbia, in which case the OFFICIAL date of receipt will be the next business day.

BB
March 2, 2001

Brenda Brumback
Brenda Brumback,
Patent Examiner